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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 95-183
Regarding the 37.0 - 38.6 GHz and	)	RM-8553
38.6 - 40.0 GHz Bands	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act -- Competitive	)	
Bidding, 37.0 - 38.6 and 38.6 - 40.0 GHz	)	

To: The Commission

REPLY OF
COLUMBIA MILLIMETER COMMUNICATIONS, L.P.

Columbia Millimeter Communications, L.P. ("CMC"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby replies to the Oppositions to and Comments on Petitions for Reconsideration filed in the above-captioned proceeding. The following is respectfully shown.

I. The Record Shows Substantial Basis for Reconsideration of the Commission's Decision to Dismiss All Pending Applications that Were Mutually Exclusive as of December 15, 1995

The Petitions for Reconsideration of the *Report and Order* in this proceeding[1/] are virtually unanimous in their agreement that the Commission should reconsider its decision to dismiss all applications that were pending and mutually exclusive ("MX") as of December 15,

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1/ *Report and Order and Second Notice of Proposed Rulemaking,* FCC 97-391 (released November 3, 1997, 63 Fed. Reg. 6079 (Feb. 6, 1998).

1995.[2/] The various petitioners have ably demonstrated that such a course would be contrary to well-established principles of law, sound policy, and the Commission's own actions since December 1995. No party opposed the petitions for reconsideration on this issue, and no party has expressed support for the Commission's decision to dismiss pending applications.

In light of the record, the Commission's course should be clear: provide a brief period for applicants whose applications remain pending to resolve all MXs, and process the applications. The Commission then may move ahead promptly with its plans to auction remaining 39 GHz spectrum.

Although no party disputes that the Commission erred in deciding to dismiss all applications that were pending and mutually exclusive on December 15, 1995, and that its processing actions have been inconsistent, there are some minor differences among the petitioners regarding the correct remedy for those actions. These differences may be readily reconciled. For example, while the Joint Petitioners agree with other petitioners that a reasonable period of time must be allowed for applicants with pending mutually exclusive applications to file amendments or voluntary dismissals to remove mutual exclusivity, they also suggest that, "at a minimum, submissions resolving mutual exclusivity conflicts that were filed prior to the

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2/ *See* Petition for Reconsideration of CMC, at pp. 7-17; Petition for Reconsideration of No Wire LLC ("No Wire"), at pp. 1-10; Petition for Reconsideration of BizTel, Inc. ("BizTel"), at pp. 2-10; Petition for Reconsideration of James W. O'Keefe ("O'Keefe"), at pp. 5-9; Joint Petition for Reconsideration of AA&T Wireless Services et al. ("Joint Petitioners"), at pp. 7-12; Petition for Reconsideration of Bachow and Associates, Inc. and Bachow Communications, Inc. ("Bachow"), at pp. 2-10; Petition for Reconsideration of Commco, L.L.C., Plaincom, Inc., Sintra Capital Corporation, and Eric Sterman ("Commco"), at pp. 8-16; and Petition for Reconsideration of DCT Transmission, L.L.C. ("DCT"), at pp. 2-12.

release of the Report & Order [i.e., November 3, 1997] must be processed."[3/] As noted in CMC's Petition for Reconsideration, however, a number of such submissions already have been processed. The Commission now should process all such submissions. To process only submissions that were filed before November 3, 1997 would be no less arbitrary than the decision to dismiss all applications that were pending and mutually exclusive as of December 15, 1995.[4/] Similarly, failure to accept and process submissions filed after November 3, 1997 that resolve would simply compound the Commission's error and cannot be justified. The Commission therefore should allow all pending applications to be amended to resolve mutual exclusivities.

In its Consolidated Comments and Opposition, WinStar asserts that the Commission should not address questions raised by O'Keefe[5/] about the processing of applications that were pending as of December 15, 1995 "[b]ecause O'Keefe's petition addresses specific authorizations granted to WinStar...."[6/] CMC believes the Commission should address O'Keefe's petition because of the compelling need to clarify what rules and policies have been and will be applied to applications that were pending as of December 15, 1995. As CMC and others have pointed out, many of these applications have been processed, if at all, in an arbitrary and seemingly ad hoc fashion. For this reason, the Commission must clarify, in the context of

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3/ Joint Petition for Reconsideration of AA&T et al., at pp. 3, 19.

4/ As BizTel noted, "amendments [to resolve mutual exclusivity] filed [after December 15, 1995] have not been processed and it would have been futile for parties to have filed any new amendments." Petition for Reconsideration and Clarification of BizTel, at n.12.

5/ Petition for Reconsideration of O'Keefe, at pp. 2-9.

6/ Consolidated Opposition and Comments of WinStar, at p. 4.

this rulemaking and not piecemeal, all outstanding processing issues that affect applications that were pending as of December 15, 1995 and remain ungranted. The resolution of any one of these issues -- including issues that affect the WinStar and O'Keefe applications -- is likely to have an effect on the processing of other applications, and it is therefore incumbent on the Commission to resolve such matters on the record. *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) (Commission must explain its reasons for treating similarly situated applicants differently).

II. Satellite Operations Should Not Be Permitted in the 39 GHz Band

BizTel, ART, Alcatel, DMC, Harris, and WinStar all oppose the request by TRW, Inc. ("TRW") to restrict terrestrial wireless authorizations in the 39 GHz band to frequencies below 39.5 GHz, to reserve the 39.5 - 40.0 GHz band for fixed-satellite service operations, and to adopt rules to facilitate sharing between satellite and terrestrial operations in the 39 GHz band.[7/] CMC agrees with these parties that TRW's proposals must be rejected. TRW has failed to show that the Commission's allocation of and channel plan for the 39 GHz band constitute arbitrary or unreasonable decisions. The record is clear that the highest and best use of the band is for continued exclusive terrestrial fixed operations.

III. The Rules Must Be Revised to Accord Consistent Treatment To Similarly Situated Licensees

Several petitioners and commenters have pointed out that the 39 GHz rules are

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7/ *See* Opposition of Advanced Radio Telecom Corporation ("ART"), at pp. 1-4; joint Comments of Alcatel Network Systems, Inc. ("Alcatel"), Digital Microwave Corporation ("DMC"), and Harris Corporation-Farinon Division ("Harris"), at pp. 1-3; Consolidated Opposition and Comments of WinStar Communications, Inc. ("WinStar"), at pp. 1-3; Opposition of BizTel, at pp. 1-3.

inconsistent with other Commission rules in Part 101 governing fixed microwave operations, and have asked the Commission to reconsider and/or clarify such rules so that similarly situated licensees are treated uniformly. For example, in its Petition for Reconsideration, CMC demonstrated that the accelerated license renewal filing rule adopted in the *Report and Order* deviates from the rules governing other Part 101 licensees and undermines the Commission's stated goals and purposes.[8/] Several other parties agreed with CMC that the Commission should therefore eliminate the accelerated filing requirement adopted in the *Report and Order*, which unfairly disadvantages incumbent 39 GHz licensees.[9/]

Similarly, the Joint Petitioners demonstrated that the Commission's decision in the *Report and Order* to retain a five-year license term for 39 GHz licenses granted prior to August 1, 1996 arbitrarily treats similarly situated licensees differently, and may create additional processing burdens, particularly in conjunction with the accelerated license renewal application filing requirement.[10/] CMC agrees with WinStar[11/] that this rule should be changed.

Finally, CMC agrees with the Joint Petitioners and WinStar[12/] that the Commission must revise the language of Section 101.47(u)(2) to conform to the language of

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8/ Petition for Reconsideration of CMC, at pp. 3-6.

9/ *See* Opposition of ART, at pp. 4-6; Comments of WinStar, at pp. 7-8. *See also* Joint Petition for Reconsideration of AA&T et al., at p. 22 (noting a "serious inequity in the renewal expectancy afforded to all 39 GHz licensees by the Report and Order.").

10/ Joint Petition for Reconsideration of AA&T et al., at p. 21-22.

11/ Consolidated Opposition and Comments of WinStar, at p. 8.

12/ *See* Joint Petition for Reconsideration of AA&T et al., at pp. 22-23; Consolidated Opposition and Comments of WinStar, at pp. 6-7.

paragraph 79 in the *Report and Order*.

WHEREFORE, the foregoing premises duly considered, CMC respectfully requests that on reconsideration of the *Report and Order* the Commission take action consistent with the foregoing.

Respectfully submitted,

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April 20, 1998

CERTIFICATE OF SERVICE

I, Michelle A. Harris, hereby certify that I have on this 20th day of April, 1998, caused a true and correct copy of the foregoing Reply of Columbia Millimeter Communications, L.P. to be delivered by hand or by first-class United States mail, postage prepaid, to the following:

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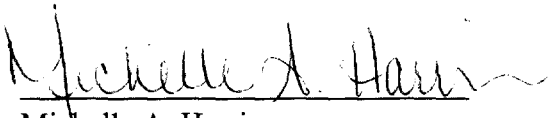

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